



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 99 132 53341

Office: Vermont Service Center

Date:

FEB 14 2000

IN RE: Petitioner:
Beneficiary:

PETITION:

Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

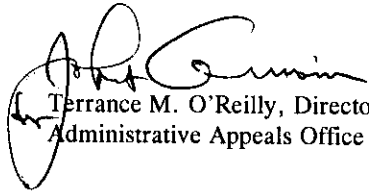
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director of the Vermont Service Center. The matter is now before the Associate Commissioner on appeal. The appeal will be dismissed.

The petitioner, a data processing consulting firm, seeks to employ the beneficiary for three years as a computer programmer/analyst in the H-1B classification for specialty occupations. In a decision issued April 28, 1999 (denial), the director determined that the beneficiary possessed the equivalent of a bachelor's degree in business administration, but that the position did not require a degree in a specific specialty and did not qualify as a specialty occupation. The petitioner appealed on May 17, 1999, and counsel submitted a motion to reopen/reconsider (brief). It noted the equivalent of the completion of a United States Bachelor of Arts in Economics, at the University of Karachi, Pakistan. Report of Evaluation of Educational Credentials dated March 17, 1999 (report).

Provisions of § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), accord nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. The definition in § 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), describes a "specialty occupation" as one which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Regulations in 8 C.F.R. 214.2(h)(4)(ii) define the term specialty occupation as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor, including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The report confirmed a baccalaureate in economics. The brief at 2, describing the petitioner's response of April 16, 1999 to the director's request for further evidence dated April 6, 1999, said,

The Petitioner next explained that it has always required that its computer systems professionals hold a bachelor's

degree or equivalent in a scientific, data processing, business or engineering academic discipline and has never hired an individual for this position without such credentials....

Finally, the Petitioner demonstrated that the beneficiary is qualified for the position based on his Bachelor of Commerce degree and Master's degree in economics. In addition, even though the employment letters were not necessary, the Petitioner submitted copies of letters from the beneficiary's prior employers, to show that he has approximately four and a half years of directly relevant experience in the data processing field.

The report evaluated the foreign degree as equivalent to a United States bachelor's degree in economics from an accredited college or university. 8 C.F.R. 214.2(h)(4)(iii)(C)(2). The petitioner surmised that the proffered job was a specialty occupation if the employer normally required a degree as the minimum requirement to enter it. 8 C.F.R. 214.2(h)(4)(iii)(A)(3).

The brief, at 6, contended,

So long as a Bachelor's degree in one of several specialized fields is a minimum requirement for the position, it qualifies as a specialty occupation.... [T]he petitioner has specified exactly which fields of study are considered to be relevant for the position, namely, the fields of computer science, business, engineering, science....

In short, the petitioner decided which baccalaureate qualified the beneficiary in different instances. On the other hand, explicit statutes exact the beneficiary's completion of a bachelor's or higher degree in the specific specialty or its equivalent as the minimum for the beneficiary's entry into the specialty occupation in the United States. See § 214(i)(2)(B) of the Act, 8 U.S.C. 1184(i)(2)(B), incorporating § 214(i)(1)(B), 8 U.S.C. 1184(i)(1)(B).

The report did not establish the economics degree's equivalence for the specific specialty of the programmer and analyst. It made no finding as to computer related courses in the degree. In fact, a transcript of one grading period in 1990 noted one course in "Auditing or computer" and constituted very slight evidence of training in the specialty occupation.

Still, the petitioner appealed to the beneficiary's experience as equivalent to a degree in the specialty occupation. 8 C.F.R. 214.2(h)(4)(iii)(C)(4). His first full-time employer's letter

attested to his employment for 1994-1998. That regulation requires the petitioner to demonstrate the recognition of the beneficiary's expertise through progressively responsible positions directly related to the specialty. As the denial noted, employers did not assess duties sufficiently to prove the requisite progression and recognition. Pertinent provisions confer equivalence to a baccalaureate in the specialty occupation only for education, knowledge, competence and practice in the specialty occupation. 8 C.F.R. 214.2(h)(4)(iii)(D)(5). No specified authorities or indicia assayed the claim for experience as equivalent to a degree. 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i)-(v).

The petition transmittal of March 26, 1999 described the proffered work at a high level of skill,

The beneficiary will devote full time to formulating designs, making technical decisions, implementing and maintaining sophisticated financial applications and designing and developing new database files. The Beneficiary will be involved in developing the requisite systems applications and programming functions....

The Department of Labor, Occupational Outlook Handbook, 1998-1999 Edition ("Handbook"), at 111, Training, Other Qualifications, and Advancement, outlines several skills,

Computer hardware engineers generally require a bachelor's degree in computer engineering or electrical engineering, whereas software engineers are more likely to need a degree in computer science. For systems analyst or even database administrator positions, many employers seek applicants who have a bachelor's degree in computer science, information science, computer information systems, or data processing....

It is unnecessary to examine in detail whether the proffered position qualified as a specialty occupation. The beneficiary did not have a baccalaureate in the specific specialty which the petition named. The Handbook designates, and the statute commands for a specific specialty, quite a different degree than his.

Counsel has cited unpublished decisions of the Service in support of the appeal. Their relevance is limited. One related to the wording of a job description as an indicator of the position as a specialty occupation, rather than the qualifications of the beneficiary. None interpreted the statute which exacts a degree in the specialty occupation. See § 214(i)(1)(B) of the Act, 8 U.S.C. 1184(i)(1)(B). Service decisions designated as binding precedents are published and made available to the public pursuant to 8 C.F.R. 103.3(c). Unpublished decisions are neither precedents nor binding.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.